IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No. 159 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL
HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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COMMISSIONER OF INCOME TAX - Applicant(s)
Versus
GUJARAT INDUSTRIAL INVESTMENT CORPN. LTD. - Respondent(s)

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Appearance :
MR MANISH R BHATT for Applicant(s) : 1,
NOTICE SERVED for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL
and
HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

Date : 13/04/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

1.The Income-Tax Appellate Tribunal, Ahmedabad Bench-”A”

has referred the following question for the opinion of this Court under Section 256(1) of the Income-Tax Act, 1961.

> "Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that accommodation at Bombay which was jointly maintained by the assessee and other Corporation for the convenience of the employees and officers of the assessee and other Corporations was not in the nature of guest-house and as such, expenditure on maintenance was not liable to be disallowed under section 37(4) of the Income-Tax Act, 1961?"

2. In the course of assessment proceedings for assessment years 1978-79 and 1979-80, the Assessing Officer made an addition of Rs.23,934/- for assessment year 1978-79 and Rs.36,118/- for assessment year 1979-80 in respect of guest house expenses. The CIT(A), however, deleted the additions. The Appellate Tribunal, relying on its decision in the assessee's own case for assessment year 1977-78 has confirmed the order of the CIT(A) giving rise to the instant reference.

3. Though the assessee is duly served, it has neither appeared through its constituted agent nor through a lawyer. This Court has heard Ms. Monaben Bhatt, learned counsel for the revenue at length and in great detail and also considered the facts of the case.

4. The question referred to this Court for opinion is squarely covered by the decision of the Supreme Court in Britannia Industries Limited V/s. Commissioner of Income-Tax and another 278 ITR 546. After considering the provisions of Sections 30, 32, 37(3), 37(4) and 37(5) of the Act and reviewing the decisions on the point, the Supreme Court has held as under :-

> “The only question which we are called upon the consider in the instant case is whether the expression “premises and buildings” referred to in sections 30 and 32 and used for the purposes of the business or profession would include within its scope and ambit the expression “residential accommodation including any accommodation in the nature of guest-house” used in sub-sections (3), (4) and (5) of section 37 of the Act. While the two expressions can be similarly interpreted, a distinction has been

sought to be introduced for the purposes of section 37 by specifying the nature of building to be a guest-house. In our view, the intention of the Legislature appears to be clear and unambiguous and was intended to exclude the expenses towards rents, repairs and also maintenance of premises/accommodation used for the purposes of a guest-house of the nature indicated in sub-section (4) of section 37. When the language of a statute is clear and unambiguous, the courts are to interpret the same in its literal sense and not to give it a meaning which would cause violence to the provisions of the statute. If the Legislature had intended that deduction would be allowable in respect of all types of buildings/accommodations used for the purposes of business or profession, then it would not have felt the need to amend the provisions of section 37 so as to make a definite distinction with regard to buildings used as guest-houses as defined in sub-section (5) of section 37 and the provisions of sections 31 and 32 would have been sufficient for the said purpose. The decisions cited by Dr. Pal contemplate situations where specific provision had been made in sections 30 to 36 of the Act and it was felt that what had been

specifically provided therein could not be excluded under section 37. The clarification introduced by way of sub-section (5) to section 37 was also not considered in the said case."

4. From the above quoted principles, it is evident that the expression "premises and buildings" referred to in sections 30 and 32 and used for the purposes of business or profession would include within its scope and ambit the expression "residential accommodation including any accommodation in the nature of guest-house" used in sub-sections (3), (4) and (5) of section 37 of the Act, and therefore, this Court is of the opinion that expenditure on maintenance of guest-house maintained by the assessee was liable to be disallowed under Section 37(4) of the Act. The question, therefore, referred to this Court for its opinion is answered in negative i.e. in favour of the revenue and against the assessee. The reference, accordingly, stands disposed of. There shall be no order as to costs.

(J.M.PANCHAL,J.)

(BANKIM.N.MEHTA,J.)

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